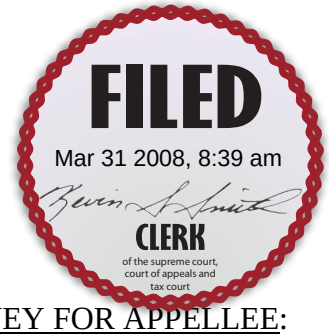

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF S.M., AND HER FATHER,	)	
IDOWA H.	)	
Appellant-Respondent,	)	
vs.	)	No. 49A04-0708-JV-488
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian Ad Litem).	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Larry Bradley, Magistrate
The Honorable Marilyn Moores, Judge
Cause No. 49D09-0606-JT-26676

March 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Idowa H. ("Father") appeals the involuntary termination of his parental rights, in Marion Superior Court, Juvenile Division, to his daughter S.M. On appeal, Father claims that the juvenile court's judgment terminating his parental rights to S.M. was not supported by clear and convincing evidence. Concluding that the juvenile court's judgment was supported by clear and convincing evidence, we affirm.

Facts and Procedural History

The facts most favorable to the judgment reveal that Yolanda M. ("Mother") and Father are the parents of S.M., born on January 20, 1996.[1] On January 7, 2005, the Marion County Department of Child Services ("MCDCS") filed a petition alleging S.M. and her siblings were children in need of services ("CHINS"). The petition stated that the physical or mental condition of all of the children in Mother's care were seriously impaired or endangered because Mother, the children's sole legal guardian, had "exercised excessive discipline on another child residing in the home" resulting in "bruises on her face, neck, back, arms and legs from being beaten with a belt by [Mother]." Exhibit 1 at 3. The CHINS petition further stated Father had not come forward to successfully demonstrate to the

[1] Father established paternity of S.M. in 2004 or 2005 and is not the biological or legal father of S.M.'s siblings. Because Father challenges the termination of his parental rights to S.M. only, we limit our discussion herein to the facts pertaining to S.M. We further note that Mother, who voluntarily relinquished

MCDCS "the ability or willingness to appropriately parent [his] child." Id. At the time of S.M.'s removal from Mother's home, Father had been incarcerated at the Indiana Department of Correction since 1998. Father's earliest possible release date is in 2014.

At an initial hearing on the CHINS petition held on February 25, 2005, Father admitted to the allegations in the CHINS petition and the juvenile court subsequently found the children to be CHINS. At the request of Father, the juvenile court proceeded to disposition. The court then ordered S.M. removed from Father's care and made S.M. a ward of the MCDCS. On the same day, the juvenile court entered a Participation Decree, wherein Father was ordered to participate in various services in order to achieve reunification with S.M. These services included a parenting assessment and any recommended parenting classes that ensued, home-based counseling services, a drug and alcohol assessment and any recommended treatment programs, suitable housing, stable employment, and consistent communication with the caseworker. Father was also ordered to establish paternity of S.M. and to execute any necessary releases of information so that the MCDCS could monitor his compliance with services.

The MCDCS filed a petition to terminate Father's parental rights to S.M. on June 27, 2006. A fact-finding hearing on the termination petition was held on July 25, 2007, and the juvenile court issued its judgment terminating Father's and Mother's parental rights to S.M. on the same day. The following appeal ensued.

Discussion and Decision

Father challenges the sufficiency of the evidence supporting the termination of his

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her parental rights to S.M., is not a party to this appeal.

parental rights to S.M. Specifically, he claims that the MCDCS failed to prove by clear and convincing evidence that the conditions resulting in the removal of S.M. from his care and custody would not be remedied, and that continuation of the parent-child relationship poses a threat to S.M.'s well-being.

I. Standard of Review

This court has long held a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we neither reweigh the evidence nor judge the credibility of the witnesses. In re Kay L., 867 N.E.2d 236, 239 (Ind. Ct. App. 2007). Instead, we consider only the evidence that supports the trial court's decision and the reasonable inferences drawn therefrom. Id.

Here, the juvenile court made specific findings in its order terminating Father's parental rights. Where the juvenile court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. Id. In deference to the juvenile court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, cert. denied, 534 U.S. 1161 (2002); see also Bester, 839 N.E.2d at 147. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. A judgment is clearly erroneous only if the

findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. Bester, 839 N.E.2d at 147. A parent's interest in the care, custody, and control of his or her children is perhaps the oldest of our fundamental liberty interests. Id. However, these parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. K.S., 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove that:

> (A) [o]ne (1) of the following exists:
> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> * * *
> (B) there is a reasonable probability that:
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
> (C) termination is in the best interests of the child; and
> (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Father does not challenge the juvenile court's determination that S.M. had been

removed for more than six months under a dispositional decree, that termination was in S.M.'s best interests, or that the MCDCS had a satisfactory plan for S.M.'s care and treatment, namely, adoption. Father does assert, however, that the MCDCS failed to prove by clear and convincing evidence that the conditions resulting in S.M.'s removal would not be remedied, and that the continuation of Father's parental relationship with S.M. poses a threat to her well-being.

Initially, we note that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, it requires the juvenile court to find only one of the two requirements of subsection (B) by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Accordingly, we shall first review whether the juvenile court's determination that the conditions resulting in S.M.'s removal from Father's care will not be remedied is supported by clear and convincing evidence.

II. Remedy of Conditions

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children *at the time of the termination hearing*, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. Additionally, the court must "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. A.F. v.

Marion County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also properly consider the services offered by the office of family and children to a parent, and the parent's response to those services as evidence of whether conditions will be remedied. Id. The MCDCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability that Father's behavior will not change. Kay L., 867 N.E.2d at 242.

In ordering that Father's parental rights to S.M. be terminated, the juvenile court made the following pertinent findings:

> 3. Allegations in the Child in Need of Services Petition that was admitted to by Father included the fact that he was incarcerated at the time on a Class B burglary conviction. He was therefore unavailable to parent.
>
> 4. There is a reasonable probability that the conditions that resulted in [S.M.'s] removal and placement outside the home will not be remedied. Father is currently serving a thirty year sentence for Arson. His current out date is in the year 2014. Father is still unavailable to parent, and will be until the time [S.M.] is emancipated. Father's ability to parent is unknown. He has not participated in any of the services required under the Court's participation Decree. Father acknowledged that he has spent most of his time in jail since he was age eight.

Appellant's App. at 13. Our review of the record reveals that clear and convincing evidence supports these findings.

Although Father is correct in his assertion that the initial reason for S.M.'s emergency removal was due to Mother's physical abuse of another child in the home, the reason for S.M.'s removal from Father's care was his unavailability to parent due to his incarceration. Father, in fact, admitted he was unable to care for S.M. at the initial hearing on the CHINS petition in February 2005.

By the time of the termination hearing in July 2007, Father was still unavailable to care for and parent S.M. due to his incarceration. Moreover, Father's earliest possible release date will not occur until the year 2014. Unfortunately, by then, S.M., who was eleven years old at the time of the termination hearing, will have already attained the age of emancipation. In addition to Father's absolute unavailability to care for S.M., his ability to properly parent S.M. also remains unknown. Father admits to having spent most of his entire life, since he was eight years old, in jail. MCDCS family caseworker Karen Williams testified that since the case was transferred to her in February 2006, Father has never communicated with her. She further testified that Father failed to complete court-ordered services, including, but not limited to the parenting and substance abuse assessments. When questioned as to whether Father had "demonstrated a willingness and ability to parent at any point in the case[,]" Williams responded, "No." When asked whether she "believe[d] that there's a reasonable probability that that will change[,]" Guthrie again responded, "No." Transcript at 48-49. Similarly, Guardian ad Litem Penny Guthrie testified that she had spoken with Father three times prior to the termination hearing, but that she "never got a sense" that he was doing anything to work toward reunification. Id. at 68. She also testified that Father had not seen S.M. since she was two years old.

"[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. Moreover, a juvenile court need not wait until a child is "irreversibly influenced"

such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. A.F., 762 N.E.2d at 1253. The evidence reveals that S.M. now resides "in a safe, secure environment[,]" and has developed strong and positive relationships with her siblings and foster mother, who plans to adopt her. Tr. at 69. Even assuming that Father will eventually develop into a suitable parent, it is unfair to ask S.M. to continue to wait to enjoy the permanency and stability that is essential to her development and overall well-being. We have previously recognized that "individuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children. In re A.C.B., 598 N.E.2d 570, 572 (Ind. Ct. App. 1992). Certainly, the two years that S.M. has had to wait is long enough. See S.P.H, 806 N.E.2d at 883 (concluding that the needs of a child are too substantial to force the child to wait and see if an incarcerated parent, once released, would be able to care for and gain custody of the child); In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them). Accordingly, we conclude clear and convincing evidence supports the juvenile court's finding that the reasons for S.M.'s removal from her Father's care would not be remedied.[2]

Conclusion

Based on the foregoing, we conclude that clear and convincing evidence supports the juvenile court's findings set forth above. These findings, in turn, support the juvenile court's ultimate judgment terminating Father's parental rights to S.M.

[2] Having determined that the juvenile court's finding regarding the remedy of conditions is supported by clear and convincing evidence, we need not address the issue of whether the MCDCS failed to prove the continuation of the parent-child relationship poses a threat to S.M.'s well-being. See L.S., 717 N.E.2d at 209

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.

(explaining that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive).